

Tennessee Valley Authority

§ 1301.10

§ 1301.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with TVA's response to your request, you may appeal an adverse determination denying your request, in any respect, to TVA's FOIA Appeal Official, the General Manager, CAO Business Services, Tennessee Valley Authority, 400 Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902-1499. You must make your appeal in writing and it must be received by the Senior Manager within 30 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the TVA determination (including the assigned request number, if known) that you are appealing. An adverse determination by the TVA Appeal Official will be the final action of TVA.

(b) *Responses to appeals.* The decision on your appeal will be made in writing within 20 days (excluding Saturdays, Sundays, and legal holidays) after an appeal is received. A decision affirming an adverse determination in whole or in part shall contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination, you must first appeal it under this section.

[64 FR 4044, Jan. 27, 1999, as amended at 65 FR 16513, Mar. 29, 2000]

§ 1301.10 Fees.

(a) In general, TVA shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. If the applicable fees are \$100 or more, TVA ordinarily will collect all applicable fees before sending copies of

requested records to a requester. If the applicable fees are less than \$100, TVA ordinarily will bill the requester for the fees in the letter responding to the request and enclosing the requested records. Requesters must pay fees by check or money order made payable to the Tennessee Valley Authority.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. TVA shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because TVA has reasonable cause to doubt a requester's stated use, TVA shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that TVA actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits, unless the fee is a standard TVA fee as set forth in paragraph (c) of this section) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. TVA shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.